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IN THE
COURT OF APPEALS OF INDIANA

CELSO HERNANDEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0707-CR-632
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0701-FB-014674

April 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Celso Hernandez appeals his conviction for robbery as a class B felony.[1] Hernandez raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The relevant facts follow. On the night of July 22, 2006, Gerardo Vicens was drinking in a strip club, and Hernandez, Brandon Davis, and Scott Faulkner were sitting near him at the bar. Brandy Anderson, a bartender at the club, had the bouncer ask Hernandez, Davis, and Faulkner to leave because Hernandez "had had too much to drink" and was becoming "belligerent." Transcript at 43. When Vicens left shortly thereafter, Hernandez, Davis, and Faulkner approached him in the parking lot, Hernandez hit Vicens, and Vicens fell to the ground. Vicens, after being hit repeatedly in the face and stomach, felt a hand reach into his pocket and take his wallet. At the time, he had $270 or $290 in denominations of twenty dollar and one dollar bills in the wallet.

Anderson was closing the club when Vicens came back inside "all beat up" and "very distraught." Id. at 35. His lip was swollen and bleeding, and he had a swollen eye and bloody nose and was "shaking and had tears in his eyes." Id. at 36. He told Anderson what had happened, and she called the police.

In the meantime, Indianapolis Police Officer Shay Michael Foley observed Hernandez, Davis, and Faulkner in an automobile "peel out" of the parking lot by the club, and he initiated a traffic stop. Id. at 60. Officer Foley noticed that Hernandez, who was sitting in the backseat of the car, was intoxicated, "extremely belligerent," and "his

[1] Ind. Code § 35-42-5-1 (2004).

knuckles were scraped up, and he had blood on him." Id. at 62. Indianapolis Police Officer John Weidner arrived to assist Officer Foley when he received a call about the incident with Vicens. The officers then arrested Hernandez, Davis, and Faulkner and found $287 in denominations of twenty dollar and one dollar bills in Faulkner's right front pocket. When Officer Weidner asked Faulkner where he "had got the money," Faulkner "said he didn't know." Id. at 69.

The State charged Hernandez with robbery as a class B felony and auto theft as a class D felony.[2] The State later filed a motion to dismiss the charge of auto theft as a class D felony, which the trial court granted. After a bench trial, Hernandez was convicted of robbery as a class B felony, and the trial court sentenced him to twelve years with four years suspended, six years in the Indiana Department of Correction and two years in Community Corrections.

The sole issue is whether the evidence is sufficient to sustain Hernandez's conviction for robbery as a class B felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of robbery is governed by Ind. Code § 35-42-5-1, which provides:

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[2] Ind. Code § 35-43-4-2.5 (2004).

> A person who knowingly or intentionally takes property from another person or from the presence of another person:
>
> (1) by using or threatening the use of force on any person; or
>
> (2) by putting any person in fear;
>
> commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant . . . .

Thus, to convict Hernandez of robbery as a class B felony, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally took currency from Vicens by using force on him, and that the offense resulted in bodily injury to Vicens. Hernandez argues that "no rational fact-finder could have concluded beyond a reasonable doubt that Hernandez . . . knowingly removed Vicens's money from his presence." Appellant's Brief at 8. He argues that he "could not have known that what he was pulling out during the course of the fight was a wallet that contained money." Id. at 9.

Here, Hernandez hit Vicens knocking him to the ground, and then Vicens was hit repeatedly in the face and stomach. Vicens then felt a hand reach into his pocket and take his wallet, which contained $270 or $290 in denominations of twenty dollar and one dollar bills. When Officers Foley and Weidner later arrested Hernandez, Davis, and Faulkner, they found $287 in denominations of twenty dollar and one dollar bills in Faulkner's right front pocket. Faulkner claimed not to know where he "had got the money." Transcript at 69. Although Faulkner later testified that he found the wallet on the ground while Hernandez and Vicens were "scufflin'," perhaps implying that the wallet had simply fallen out of Vicens's pocket, Vicens testified that he felt a hand reach into his pocket and take the wallet. Id. at 87. Hernandez merely asks that we reweigh the evidence, which we cannot do. See Jordan, 656 N.E.2d at 817. Given the facts of the

case, we conclude that the State presented evidence of probative value from which a reasonable trier of fact could have found Hernandez guilty beyond a reasonable doubt of robbery as a class B felony. See, e.g., Vennard v. State, 803 N.E.2d 678, 682 (Ind. Ct. App. 2004) (holding that the evidence was sufficient to convict defendant of robbery where police found no money in the victim's wallet and the money in defendant's possession was bloody), trans. denied.

For the foregoing reasons, we affirm Hernandez's conviction for robbery as a class B felony.

Affirmed.

BARNES, J. and VAIDIK, J. concur